

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 14, 2005 Session

SANDRA K. WILLIAMS v. RONNIE LLOYD WILLIAMS

**Appeal from the Circuit Court for Claiborne County
No. 8896 John McAfee, Judge**

No. E2004-02439-COA-R3-CV - FILED SEPTEMBER 12, 2005

In this divorce case, Wife contends that the trial court erred in designating Husband primary residential custodian of the parties' minor child, in its valuation and division of marital assets and debts, and in failing to award Wife spousal support and attorney's fees. We affirm the judgment of the trial court with respect to all of these issues except for the issue pertaining to spousal support. With respect to that issue, we hold that Wife is entitled to alimony *in futuro* based upon a showing of need and Husband's ability to pay.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part and
Reversed in Part; Cause Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and D. MICHAEL SWINEY, JJ., joined.

Johnny V. Dunaway, LaFollette, Tennessee, for the Appellant, Sandra K. Williams.

David H. Stanifer, Tazewell, Tennessee, for the Appellee, Ronnie Lloyd Williams.

OPINION

I.

In March of 2003, Appellant, Sandra K. Williams, ("Wife") filed a complaint for divorce against Appellee, Ronnie Lloyd Williams, ("Husband") upon grounds of cruel and inhuman treatment and adultery and, alternatively, upon grounds of irreconcilable differences. At the time the complaint was filed, the parties had been married for twenty-seven years and had two children - Amelia, born October 20, 1985, and Gabe (whom the parties refer to as "Gabe"), born July 5, 1989. *Inter alia*, the complaint requests that the trial court award Wife custody of the children, award her child support, approve her parenting plan, award her spousal support, award her attorney's fees and

costs, and make an equitable distribution of the parties' property. In response, Husband filed a counter-complaint for divorce upon grounds of inappropriate marital conduct and upon the alternative grounds of irreconcilable differences.

The case was tried in May of 2004, and on September 21, 2004, the trial court filed its judgment granting Wife a divorce upon grounds of adultery. The judgment incorporates a permanent parenting plan that allows the parties joint custody of their minor child, Gabe. The judgment places his primary residential custody with Husband and grants Wife co-parenting time every Wednesday and every other weekend, with two separate weeks in the summer. The judgment divides marital assets and debt as follows:

<u>Assets/Debt</u>	<u>Value</u>	<u>Husband</u>	<u>Wife</u>
NRECA Pension	\$229,144.00	\$229,144.00	
NRECA 401K	92,693.00	92,693.00	
IRA - Putnam Investments	32,800.00	32,800.00	
1989 Ford F-150 truck	3,600.00	3,600.00	
Ford Tractor	3,000.00	3,000.00	
Household furnishings at 885 Williams Road ¹	3,600.00	3,600.00	
Met Life Insurance Policy 86448482	4,071.00	4,071.00	
Firearms	1,200.00	1,200.00	
Jewelry	6,600.00	1,600.00	\$ 5,000.00
Four calves	2,400.00	2,400.00	
Pressure washer	150.00	150.00	
Marital residence	280,000.00		280,000.00
Two lots - Ravenwood	38,000.00		38,000.00
Retirement - Tn. Consolidated	10,103.00		10,103.00
IRA - First Century Bank	61,132.00		61,132.00
Oppenheimer Fund	1,047.00		1,047.00
2000 Kia vehicle	10,000.00		10,000.00
Furniture at marital residence	15,000.00		15,000.00
Met Life Insurance 86444848361 Policy	3,729.00		3,729.00
Mower	75.00		750.00
Prudential Financial Acct.	59.00		59.00
Tax debt for 2003	<1,830.54>	<915.27>	<915.27>
First mortg. to Home Federal Bk.	<41,000.00>		<41,000.00>

¹ Husband's residence after the parties separated.

Second mortg. to Home			
Federal Bk.	<2,000.00>		<2,000.00>
Citibank debt	<4,600.00>		<4,600.00>
Property taxes on marital residence	<1,085.00>		
Property taxes on two lots - Ravenwood	<53.00>		<53.00>
Children unpaid medical expenses	<563.00>	<281.50>	<281.50>
Propane acct.	<u><313.47></u>	<u> </u>	<u><313.47></u>
Totals	<u>\$751,294.07</u>	<u>\$374,891.77</u>	<u>\$376,402.30</u>

The judgment also addresses the following miscellaneous matters:

That [Wife] is granted Judgment against [Husband] in the sum of \$1,250.00, to reimburse expenses [Wife] incurred for the re-taking of [Husband's] deposition, since he testified falsely under oath.

That the sum of \$19,536.15, which [Husband] obtained by cashing the parties' US Savings Bonds and the \$6,000.00 [w]hich Husband withdrew from the farm account and delivered to his two brothers in the total sum of \$25,536.15, is construed to be repayment of a debt which [Husband] owed to his mother.

That no alimony shall be awarded: but [Husband] shall maintain medical insurance coverage to insure Amelia Williams and Gabe Williams, as long as the coverage is available through his employer.

That each party shall be responsible for payment of their own attorney fees.

II.

Wife now appeals this judgment and raises the following issues:

- 1) Did the trial court err in designating Husband primary residential parent of the parties' minor child?
- 2) Did the trial court err in its valuation and division of marital assets?
- 3) Did the trial court err in failing to find that Husband dissipated marital assets?

- 4) Did the trial court err in its apportionment of marital debt?
- 5) Did the trial court err in failing to award Wife spousal support?
- 6) Did the trial court err in failing to require that Husband pay Wife's attorney's fees and discretionary costs?

III.

This is a non-jury case and, accordingly, our review is *de novo* upon the record of the trial court without any presumption of correctness attaching to the trial court's conclusions of law. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996) and Tenn. R. App. P. 13(d). We must, however, presume the trial court's factual findings to be correct absent evidence preponderating to the contrary. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). "On an issue which hinges on the credibility of witnesses, the trial court will not be reversed unless there is found in the record clear, concrete, and convincing evidence other than the oral testimony of witnesses which contradict the trial court's findings." *Galbreath v. Harris*, 811 S.W.2d 88, 91 (Tenn. Ct. App. 1990), citing *Tennessee Valley Kaolin Corp. v. Perry*, 526 S.W.2d 488, 490 (Tenn. Ct. App. 1974).

IV.

A.

The first issue we address is whether the trial court erred in designating Husband primary residential custodian of the parties' minor son.

In *Suttles v. Suttles*, 748 S.W.2d 427, 429 (Tenn. 1988), the Tennessee Supreme Court acknowledged the general rule that "the details of custody and visitation with children are peculiarly within the broad discretion of the trial judge" (quoting *Edwards v. Edwards*, 501 S.W.2d 283, 291 (Tenn. Ct. App. 1973)) and, a trial court's decision in that respect will not ordinarily be reversed unless it is shown that the court has abused its discretion. In *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001), the Court discussed the abuse of discretion standard as follows:

Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to propriety of the decision made." *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000); *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000). A trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999). The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

Tenn. Code Ann. § 36-6-404 provides that a final decree for divorce involving a minor child shall include a permanent parenting plan that incorporates a residential schedule designating one parent the primary residential parent. Tenn. Code Ann. § 36-6-402(4) defines “primary residential parent” as “the parent with whom the child resides more than fifty percent (50%) of the time.” In determining an appropriate residential schedule and the primary residential parent thereunder, Tenn. Code Ann. § 36-6-404 provides that the court must consider the following list of factors:

- (1) The parent’s ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in the society which the child faces as an adult;
- (2) The relative strength, nature, and stability of the child’s relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;
- (3) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interests of the child;
- (4) Willful refusal to attend a court-ordered parent education seminar may be considered by the court as evidence of that parent’s lack of good faith in these proceedings;
- (5) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;
- (6) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;
- (7) The love, affection, and emotional ties existing between each parent and the child;
- (8) The emotional needs and developmental level of the child;
- (9) The character and physical and emotional fitness of each parent as it relates to each parent’s ability to parent or the welfare of the child;
- (10) The child’s interaction and interrelationships with siblings and with significant adults, as well as the child’s involvement with the child’s physical surroundings, school, or other significant activities.
- (11) The importance of continuity in the child’s life and the length of time the child has lived in a stable, satisfactory environment.
- (12) Evidence of physical or emotional abuse to the child, to the other parent or to any other person;
- (13) The character and behavior of any other person who resides in or frequents the home of a parent and such person’s interactions with the child;
- (14) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children.

- (15) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and
- (16) Any other factors deemed relevant by the court.

As set forth at Tenn. Code. Ann. § 36-6-401, “[t]he best interests of the child are served by a parenting arrangement that best maintains a child’s emotional growth, health and stability and physical care.” In formulating such an arrangement, the court must engage in a comparative fitness analysis of the two parents. *Parker v. Parker*, 986 S.W.2d 557, 562 (Tenn. 1999).

In her brief, Wife argues that “[t]he preponderance of the evidence adduced at trial clearly shows the Court’s designation of [Husband] as Gabe’s primary residential custodian to be error. Moreover, the Court failed to sufficiently consider several of the relevant factors found at Tenn. Code Ann. §36-6-404(b).” As set forth below, we respectfully disagree with Wife’s argument based upon our review of the record as it pertains to the statutory factors.

Subsection (1) - The evidence does not indicate that either parent has a greater ability than the other to “instruct, inspire and encourage the child to prepare for a life of service.”

Subsection (2) - Gabe testified that he has a good relationship with both parents; however, he also testified throughout the case that he prefers to be with his father and would like to reside primarily with him. He testified that he and his father hunt and fish together, and Wife conceded that she is aware of the strong bond between Gabe and Husband. While we acknowledge the positive relationship between Gabe and his mother, the evidence presented compels us to find that his relationship with his father is stronger and more stable.

Subsection (3) - We find no evidence that persuades us that Husband has been unwilling or unable to “facilitate and encourage a close and continuing relationship between” Gabe and Wife. Husband testified at trial that he will “never try to turn my children against their mother.” Wife references her pre-trial testimony that there was “tension and stress” between her and Gabe after she separated from Husband and that on an initial weekend visitation with Gabe, Husband called “several times” and that Gabe “cried for forty-five minutes after [Husband] called.” Even if true, this testimony does not in itself constitute convincing proof of an attempt by Husband to sabotage Gabe’s relationship with his mother. Any allegation in that regard is further contradicted by Wife’s own testimony at trial that during her visitations with Gabe every other weekend, she has had “no difficulties or problems or acting out behaviors at all” and has had “no problems with rebellion or [Gabe’s] telling [me] that he’s not going to stay there.” Wife further testified, “[W]hen he’s at my house I have no problems at all.” On the other hand, Gabe testified that he doesn’t like “them” talking about his father at his mother’s house and that in a telephone conversation the day before trial his mother had told him that his father was a “bad influence” on him. While we concede that Wife’s negative feelings toward Husband may be understandable given the circumstances of this divorce, comments such as this one do not in our opinion “facilitate and encourage a close and continuing relationship” between Gabe and his father.

Subsection (4) - This factor is not at issue in this case.

Subsection (5) - While Wife asserts that she “has shown more willingness to consistently provide Gabe with food, clothing, [and] medical care,” she makes no specific reference to evidence in the record supporting this assertion nor does our review of the record reveal such. Wife also asserts that she has shown more willingness than Husband to provide “other necessary care, particularly in his education.” It appears from the evidence that prior to the parties’ separation, Wife assumed primary responsibility for getting Gabe to and from school and for supervising his homework.

Subsection (6) - Wife argues that she has been Gabe’s primary caregiver and “has taken greater responsibility for performing parental responsibilities.” The record shows that both parents have taken responsibility for performing parental responsibilities; however, the evidence indicates that Wife has assumed the greater share of responsibility with respect to Gabe’s educational requirements as noted above.

Subsection (7) - It is clear to us that Gabe loves both of his parents; however, based upon his stated preference to live with Husband, we are compelled to find that there is a stronger emotional tie with his father at this time.

Subsection (8) - Although Wife refers us to her testimony that her son “is very emotional and gets upset easily,” she does not explain how this emotional profile mitigates in favor of her receiving primary residential custody.

Subsection (9) - We find no evidence that one parent’s “physical and emotional fitness” exceeds the other’s. As to the matter of character the record confirms that Husband was involved in an extra-marital relationship with another woman and was untruthful in his responses to deposition questions regarding that relationship. We certainly do not condone Husband’s behavior in this regard; however, there is no proof his sexual indiscretion adversely affected his relationship with his son or his ability to care for his son.

Subsection (10) - Wife indicates that Gabe’s interaction and interrelationship with his sister, Amelia, is better served with Wife as primary residential custodian. The record indicates that Gabe’s interaction with his sister will be of relatively limited duration even if Wife is designated primary residential custodian. In this regard, we note Amelia’s testimony that she intends to attend the University of Tennessee and will leave home two years after her graduation from high school in 2004.

Subsection (11) - We do not find evidence in the record showing the importance of continuity in Gabe’s life. There is no indication that the environment Gabe lived in prior to his separation was not a stable and satisfactory environment and, aside from the unfortunate fact of having divorced parents, there is no evidence that Gabe’s current environment is not stable and satisfactory.

Subsection (12) - This does not appear to be an issue in this case.

Subsection (13) - Wife states that “the character and behavior of other persons who reside in or frequent Husband’s home and such person’s interactions with Gabe do not support the Trial Court’s decision to make [Husband] the primary residential parent.” Wife does not specifically support this statement with references to the record. While there is evidence in the record that the woman with whom Husband had an extra-marital relationship frequents Husband’s home, there is no proof that her character or behavior will affect Gabe in a negative way.

Subsection (14) - As we have noted, Gabe has consistently indicated that he wishes to reside primarily with his father.

Subsection (15) - Wife is a school teacher employed at Gabe’s school and her work schedule coincides with Gabe’s school schedule. The proof indicates that Husband is ordinarily home from work by 5:00 p.m. Accordingly, when residing with Husband Gabe is unsupervised on school days for approximately two hours before his father arrives home from work.

It is apparent from the foregoing that some of the above factors lie in favor of Husband and some lie in favor of Wife. On the whole, however, we do not agree that the evidence preponderates against the trial court’s conclusion that Husband should be granted primary residential custody of Gabe. Bearing in mind the applicable standard of review, we cannot say that the trial court’s decision to grant Husband primary residential custody was a decision “against logic or reasoning.”

B.

The next issue we address is whether the trial court erred in its valuation and division of marital assets.

Tenn. Code Ann. § 36-4-121(a) provides for the division of marital property between the parties to a divorce. The separate property of each party is not subject to such division. *Brock v. Brock*, 941 S.W.2d 896, 900 (Tenn. Ct. App. 1996). Accordingly, it is incumbent upon the trial court to classify property as either “marital” or “separate.” *Batson v. Batson*, 769 S.W.2d 849, 856 (Tenn. App. 1988).

As a general matter, marital property is that property acquired by either or both spouses during the marriage that continues to be owned by either or both spouses at the time that the divorce complaint is filed. Tenn. Code Ann. § 36-4-121(b)(1)(A). Property that is acquired by a spouse by gift, bequest, devise or descent, even if acquired during the marriage, is properly classified as separate property and is not subject to division. Tenn. Code Ann. § 36-4-121(b)(2)(D).

Tenn. Code Ann. § 36-4-121 (a) provides that the division of marital property shall be equitable; however, as we noted in *Batson*, *id.* at 859, “an equitable property division is not

necessarily an equal one. It is not achieved by a mechanical application of the statutory factors, but rather by considering and weighing the most relevant factors in light of the unique facts of the case.”

Under Tenn. Code Ann. § 36-4-121(c), the court is required to consider all relevant factors in arriving at an equitable division of marital property, including the following:

- (1) The duration of the marriage.
- (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
- (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;
- (4) The relative ability of each party for future acquisitions of capital assets and income;
- (5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;
- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
- (10) The amount of social security benefits available to each spouse; and
- (11) Such other factors as are necessary to consider the equities between the parties.

Of course, before an equitable division of marital property is possible it is necessary that value be assigned to such property based upon submitted proof. In the matter before us, Wife contends that the trial court erred in this regard as follows.

First, Wife asserts that although in his testimony Husband placed a value of \$3,200.00 on household furnishings and other personal property removed by him from the marital residence, he also submitted a list of assets as an exhibit in the case “wherein he stated that the value of the assets he removed from the marital residence was \$5,000.00.” Wife objects to the trial court’s valuation of this property at \$3,600.00 and contends that the trial court should have valued the property at \$5,000.00. We disagree. The exhibit referenced by Wife, identified by her as trial exhibit number 3, was prepared by Husband. That exhibit lists a total value of \$30,000.00 for “household contents” and assigns \$5,000.00 of that value to Husband and \$25,000.00 to Wife. Nothing in Exhibit 3 identifies the \$5,000.00 amount as the value of personal property removed by Husband from the marital residence nor was any other evidence presented to indicate that this \$5,000.00 figure

represents the value of that property. In his opening statement at trial, Husband's attorney identified the \$5,000.00 shown on exhibit 3 as that portion of the total value of the household contents that Husband contends he *should receive* in an equitable distribution of same. It is not identified as the value of property in his possession. In her own testimony, Wife confirmed that the property in Husband's possession at the time of trial held a value of \$3,285.00 in accordance with an appraisal prepared on Wife's behalf by Powell Auction Company that was also filed as an exhibit in the case. Wife's argument that the trial court erred in failing to value this property at \$5,000.00 is without merit.

Wife also argues that the trial court erroneously valued personal property in the marital residence that was not removed by Husband at \$15,000.00. Wife contends that the actual value of these items was \$8,841.00 based upon the above noted report of her appraiser. Husband testified that furnishings remaining in the marital residence were worth in excess of \$27,000.00. Tenn. R. Evid. 701(b) allows a witness to testify as to the value of his or her own property. We do not agree that the evidence preponderates against the trial court's assignment of a value to this property that falls between the values presented by the parties.

Next, Wife asserts that the trial court undervalued a gun collection that was awarded to Husband. Wife notes that although Husband testified that this gun collection was purchased for \$1,200.00, he also agreed with appraisal evidence submitted by Wife that the collection was worth \$3,680.00. Husband testified as follows regarding the gun collection:

Q Let's go down Exhibit 24 and tell me - - you're not disputing the value [the appraiser] came up with, thirty some hundred dollars - -

A No.

Q - - would be the total of all of them. But just tell the Court where these guns came from. Just start at the top.

A The first one, twelve gauge shotgun, I bought it. The twenty gauge shotgun, dad bought it for me when I was fourteen years old.

. . .

Q I guess - - what would be the value of the top gun that would have been acquired through - -

A I just bought it not long ago.

Q What did you pay for it?

A It was three hundred and something dollars.

Q Are you talking about three hundred, three fifty or closer to four hundred?

A Say three fifty.

Q All right, three hundred and fifty on the top gun. The second gun you said it was given to you when you were fourteen years old?

A Right.

Q Forget that. Go to the next one.

A The Reuger, I bought the Reuger.

Q How much did you pay for it?

A Yeah, I'd say it was a Reuger. It's one I do groundhog hunting with. I don't - - I'm going to guess four hundred dollars.

Q Next gun.

A A Winchester .22 that was given to me.

Q By whom?

A It actually was my uncle's. When he passed away I got it.

Q So that came as a gift to you?

A Yeah.

Q Let's go to the next one.

A The Super Blackhawk, I give two hundred and fifty dollars for it.

Q Let's go to the next one.

A The Smith and Wesson was the one that Sandy bought for me.

Q It's a gift to you?

A Yes. She gave it to me for Christmas.

Q All right, let's forget that one. What would it be worth?

A I'm going to guess now four hundred and fifty dollars.

Q Four hundred and fifty, all right. Next one.

A 357 Magnum. Oh, the 357, my uncle owned it. I got the .22 and the pistol. The .38 is my grandpa's gun.

Q Who gave that to you?

A Well, at his death I got it. The Bodyguard, I remember that one. That was the first one - - that was the first pistol I ever bought, and I give two hundred dollars for it.

Q Before marriage or after marriage?

A No, it was after.

Q After you were married you bought that and you gave two hundred for it?

A Yeah.

It is apparent from this testimony that several of the guns in the collection at issue came into Husband's possession by "gift, bequest, devise or descent" and are, therefore, not subject to division as set forth at Tenn. Code Ann. §36-4-121(b)(2)(D). Husband's testimony shows that the other guns in the collection were purchased at a cost of \$1,200.00. The evidence does not preponderate against the trial court's adoption of this figure as the value of the guns as marital property. Wife's argument to the contrary is without merit.

C.

The next issue we address is whether, in its determination of an equitable division of marital assets, the trial court failed to consider Husband's dissipation of such assets.

Tenn. Code Ann. §36-4-121(c)(5) provides that, in making an equitable division of marital property, the court shall consider the dissipation of marital property by either spouse. We recently restated the law with respect to what constitutes a dissipation of marital assets in *Altman v. Altman*, No. M2003-02707-COA-R3-CV, 2005 WL 819733 (Tenn. Ct. App. M.S., filed April 7, 2005) * 3 & 4, as follows:

Even though no statutory definition of "dissipation" exists, the term has a common meaning in the context of divorce. The concept of dissipation is based

on waste. Dissipation of marital property occurs when one spouse uses marital property, frivolously and without justification, for a purpose unrelated to the marriage and at a time when the marriage is breaking down. Dissipation involves intentional or purposeful conduct that has the effect of reducing the funds available for equitable distribution.

Whether a particular course of conduct constitutes a dissipation depends on the particular facts of the case. The party claiming that dissipation has occurred has the burden of persuasion and the initial burden of production. After the party alleging dissipation establishes a prima facie case that marital funds have been dissipated, the burden shifts to the party who spent the money to present evidence sufficient to show that the challenged expenditures were appropriate.

An equitable division of marital property requires a thoughtful consideration of all the relevant factors listed in Tenn. Code Ann. § 36-4-121(c). Dissipation is not a separate factor. To the contrary, the allegedly improper or wasteful expenditure or transaction must be considered in the context of the marriage as a whole, and it must be weighed along with all the other relevant factors in the case. The factors that courts most frequently consider when determining whether a particular expenditure or transaction amounts to dissipation include: (1) whether the expenditure benefitted the marriage or was made for a purpose entirely unrelated to the marriage; (2) whether the expenditure or transaction occurred when the parties were experiencing marital difficulties or were contemplating divorce (3) whether the expenditure was excessive or de minimis; and (4) whether the dissipating party intended to hide, deplete, or divert a marital asset.

(Citations omitted)

In her brief, Wife describes transactions that she argues the trial court should have considered in dividing the parties' marital property:

On October 24, 2002, six days before he told [Wife] that he wanted a divorce, Husband cashed in a number of jointly-owned United States savings bonds and received \$32,379.72, consisting of accrued total interest of \$14,454.72 on a total issue price of \$17,925.00. [Husband] testified that he cashed in the bonds because he "seen we was headed for divorce." [Wife] was aware that [Husband] had cashed in the bonds and that he used \$13,307.41 from the proceeds to pay off their daughter's car, but she did not know the total amount that [Husband] received from cashing in the bonds until discovery was completed.

[Husband] testified that he wrote another check on the farm account in the amount of \$3,000.00 on November 25, 2002, which he used to pay people for work done around the marital residence, and possibly, to purchase a disc mower.

In February 2003 [Husband] withdrew \$1,000.00 from a Home Federal equity line of credit, and in March 2003 he withdrew an additional \$2,000.00 from the same account, for reasons unknown to [Wife]. [Husband] testified that he used this money to pay Robert Hurst for putting a new roof on the marital residence.

Although Wife argues that the trial court's failure to consider these transactions was reversible error, she cites no legal authority for her argument with respect to the transactions of November 25, 2002, and February and March of 2003. T.R.A.P. 27(a)(7) provides that the appellant's brief "shall contain ... [a]n argument ... with citations to the authorities and appropriate references to the record ... relied on." Courts in this state routinely hold that the failure to make appropriate references to the record and to include citations of relevant authority in the argument section of a brief constitutes a waiver of the issue raised. *Bean v. Bean*, 40 S.W.3d 52, 53 (Tenn. Ct. App. 2000). Nevertheless, we have considered Wife's argument. If we assume that Wife is contending that these transactions constitute a dissipation of the marital estate, we hold that Wife has failed to reference evidence sufficient to warrant a finding of dissipation based upon those factors set forth above in *Altman*. While apparently each of these transactions occurred when the parties were experiencing marital difficulties, we do not agree that that fact alone is sufficient to establish dissipation. And, with respect to the question of "whether the expenditure or transaction benefitted the marriage or was made for a purpose entirely unrelated to the marriage," the only evidence that Wife references as to how any of the proceeds from these transactions were spent indicates that they were spent for purposes related to the marriage - "for work done around the marital residence," and "for putting a new roof on the marital residence." The evidence does not preponderate against the trial court's decision with respect to this issue.

Wife next argues that Husband dissipated marital assets by transferring funds to his brothers:

In addition to paying for Amelia's car, and unbeknownst to [Wife], [Husband] gave \$19,072.13 from the proceeds of the savings bonds [cashed in on October 24, 2002] to his brothers under the guise of repayment of an alleged loan owed to his deceased mother by transferring \$9,536.16 to Bobby Williams and \$9,536.16 to Trent Williams. [Husband] also gave each brother approximately \$3,000.00 in cash, accounting for the \$6,000.00 check he had drawn on his farm account on September 30, 2002.

The record shows that Husband's mother died in June of 2003. Husband testified that at the time of his mother's death he owed her approximately \$37,000.00. The only heirs at the time of his mother's death were Husband and his two brothers, Bobby Williams and Trent Williams. Accordingly, Husband repaid the debt that he owed to his mother's estate by disbursing \$12,536.16 to each of his brothers commensurate with their expected one-third inheritances². Husband testified that the debt to his mother had accumulated over the years between the year 2000 and the time of her death. Husband further testified that this debt was represented by \$15,000.00 which his mother had

²The record shows that probate of the estate was still pending at the time of trial.

loaned him for the purchase of three acres of land and for additional monies he had received from her when she sold tobacco or cattle. Husband testified that he used money loaned to him by his mother to blacktop the driveway and to pay for work done when the parties bought their house. The testimony of Husband's brother, Bobby Williams, corroborated Husband's testimony regarding the loan from his mother and its repayment by Husband. Bobby Williams also testified that the loan was evidenced by writing on a piece of paper kept in his mother's Bible and that the writing was destroyed upon Husband's repayment of the loan. Husband's other brother, Trent Williams, also testified that Husband owed his mother money at the time of her death and that he was paid his share of that indebtedness by Husband in the amount of approximately \$12,500.00. Trent Williams further confirmed that his parents loaned their children money at various times and that he himself had on one occasion received a loan of \$85,000.00 from his mother that he had repaid. All of this evidence supports the trial court's conclusion that the monies transferred by husband to his brothers constituted the legitimate repayment of a loan to Husband from his mother. The evidence in this case preponderates in favor of the trial court's decision and, therefore, Wife's argument must fail.

In the context of her argument that Husband dissipated marital property, Wife describes the Husband's inheritance of \$75,666.67 upon the death of his uncle and the receipt of \$35,000.00 representing a gift from Husband's mother. Wife correctly observes that the trial court found that these funds constituted contributions by Mr. Williams to the marital estate. Wife does not state that the trial court's finding in this respect was in error. If, in fact, that is Wife's contention we are compelled to disagree and upon our careful review of the record, we hold that the evidence does not preponderate against the trial court's finding.

D.

The next issue we address is whether the trial court erred in its apportionment of marital debt.

In this regard, Wife argues that “[g]iven the Trial Court’s erroneous division of the marital assets, forcing [Wife] to assume virtually all of the marital debt, and stating that she could sell the Ravenwood Forest lots to pay off the mortgages on the marital residence was an abuse of discretion.” Wife’s argument that the trial court erred in dividing the marital assets in this case is based solely upon her assertion that the trial court overvalued assets awarded to Wife, undervalued assets awarded to Husband, and failed to consider Husband’s alleged diminution of the marital estate. As set forth above, we have determined that argument to be without merit and, accordingly, Wife’s argument that the trial court erred in apportioning marital debt is, likewise, without merit. We also observe that most of the debt assigned to Wife in this case was associated with the purchase of marital assets also assigned to Wife. Tennessee case law provides that, “[w]hen practicable, debts should follow the assets they purchased.” *Mondelli v. Howard*, 780 S.W.2d 769,773 (Tenn. Ct. App. 1989).

E.

The next issue we address is whether the trial court erred in failing to award wife spousal support.

Tenn. Code Ann. §36-5-101(d)(1)(C) provides that a court may award alimony to a spouse who is economically disadvantaged relative to the other spouse. Once the court has determined a party to be economically disadvantaged relative to his or her spouse, it must determine the nature, amount, length of term, and manner of payment of the alimony to be awarded. *Perry v. Perry*, 114 S.W.3d 465, 467 (Tenn. 2003). In reaching a conclusion as to the nature, amount and length of term of spousal support a party should receive, a trial court is required to consider all relevant factors set forth at Tenn. Code Ann. §36-5-101(d)(1)(E) which are, in this case, as follows:

- (i) The relative earning capacity, obligations, needs, and financial resources of each party including income from pension, profit sharing or retirement plans and all other sources;
- (ii) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earning capacity to a reasonable level;
- (iii) The duration of the marriage;
- (iv) The age and mental condition of each party;
- (v) The physical condition of each party; including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (vi) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;
- (vii) The separate assets of each party, both real and personal, tangible and intangible;
- (viii) The provisions made with regard to the marital property as defined in § 36-4-121;
- (ix) The standard of living of the parties established during the marriage;
- (x) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (xi) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and
- (xii) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

While a trial court should consider each of the above factors relevant under the circumstances, the two most important factors to be considered in awarding spousal support are need of the disadvantaged spouse and the obligor spouse's ability to pay. *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001).

Several varieties of support or alimony are available in Tennessee - alimony *in solido*, alimony *in futuro*, rehabilitative alimony, and transitional alimony. Tenn. Code Ann. §36-5-101(d)(1)(C) notes the general assembly's preference that whenever possible a spouse be rehabilitated by a grant of rehabilitative support and states, "To be rehabilitated means to achieve with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse considering the relevant statutory factors and the equities between the parties." Although the legislature has indicated a preference for awarding rehabilitative support, a trial court should not refrain from awarding long-term support when appropriate under the statutory factors set forth at Tenn. Code Ann. §36-5-101(d)(1)(E). *Robertson v. Robertson*, 76 S.W.3d 337, 341-342 (Tenn. 2002).

In the matter *sub judice*, the trial court stated as follows with regard to alimony:

The Court, of course, in any alimony case, the Court looks at 36-5-101, which gives a list of factors in considering as to what to do with reference to alimony. One of the factors talks about the marital distribution. In fact, the wife, at this point in time, is about ten thousand, roughly about ten thousand ahead. Further, the court finds that the husband, Mr. Williams, has contributed to roughly a little over a hundred thousand dollars to the marriage which built up the marital estate. He also contributed to Mrs. Williams' education. She has a bachelor's degree. I did note that he just had a high school diploma. Further the issue of custody also plays a factor in the issuance of alimony. Considering all the other factors - - and further the Court found that the separate property that's been testified to here, which is a factor, is roughly about seventy-two five, but that seems to me be a counter in reference to what he has contributed during the marriage or what he has inherited from his uncle and what was given to him by his mother. The Court finds that alimony is not appropriate in this case.

This statement of the trial court indicates that in reaching its decision the court considered several of the factors set forth at Tenn. Code Ann. § 36-5-101(d)(1). However, our review of the evidence and our consideration of all the statutory factors compels us to conclude that Wife should be granted alimony in this case.

This was a marriage of long duration (twenty-eight years), and from the record it appears that Husband's adultery was the predominant reason for the divorce. While both parties apparently have good job security - Wife is a tenured elementary school teacher and Husband is employed in a supervisory position with an employer for whom he has worked approximately thirty years - there is great disparity between their levels of income with Husband making \$75,000.00 to \$76,000.00 per year and Wife making between \$30,000.00 and \$31,000.00 per year. Further, Husband testified that, for the nominal amount of \$14.00 per week, his employer provides him with a vehicle which it insures and maintains and for which it supplies gasoline. Husband testified that he pays monthly

rent in the amount of \$475.00 and, of course, he will incur normal daily living expenses. However, given his annual salary, it is clear that Husband will have a substantial amount of funds remaining each month after payment of necessary expenses. By comparison, a statement submitted by Wife shows that she incurs total monthly expenses of \$4,056.87 which must be paid out of a net income of only \$1,898.00. We recognize from testimony of Wife that some of these expenses are slightly inflated and include a mortgage debt of \$290.37 which was to be paid in full the month following trial. However, even if the monthly expense total is discounted by \$500.00, it is evident that Wife's monthly income is markedly inadequate to pay her expenses. Based upon our review of the record, it is our determination that Wife has demonstrated a need for alimony and Husband has the ability to pay alimony.

As we have stated, the legislature has indicated its preference that, whenever possible, a spouse be rehabilitated by a grant of rehabilitative alimony. In this case, however, we do not find that rehabilitation is a viable alternative. Wife was forty-six years of age at the time of trial. She currently holds a bachelors degree in education and a secretarial degree. Should she remain in her chosen field of elementary education, there is no proof that an advanced degree would result in a significant increase in her level of income. If, on the other hand, she were to endeavor to obtain education or training in a different field of employment she would find herself, at the age of approximately fifty, competing for jobs in which she has had no prior experience.

Based on the foregoing, it is our conclusion that Wife should be granted alimony *in futuro* in the amount of \$750.00 per month from September 21, 2004, the date of the final judgment for divorce. We further decree that alimony which will have accrued between September 21, 2004, and September 30, 2005, in the total amount of \$9,225.00, shall be payable at the rate of \$500.00 per month beginning October 1, 2005, until paid in full.

F.

The final issue presented in this case is whether the trial court erred in failing to award Wife attorney's fees and discretionary costs.

The Tennessee Supreme Court has stated that "[t]he allowance of attorney's fees is largely in the discretion of the trial court and the appellate court will not interfere except upon a clear showing of abuse of that discretion." *Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995). Upon our review of the record, it is our determination that the trial court did not abuse its discretion in denying Wife attorney's fees and discretionary costs.

V.

For the foregoing reasons, we reverse in part, affirm in part and remand for whatever further action may be necessary consistent with our decision herein. Costs of appeal are apportioned one-half to Sandra K. Williams and one-half to Ronnie Lloyd Williams.

SHARON G. LEE, JUDGE